

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TEXAS LEAGUE OF UNITED LATIN
AMERICAN CITIZENS; NATIONAL
LEAGUE OF UNITED LATIN
AMERICAN CITIZENS; LEAGUE OF
WOMEN VOTERS OF TEXAS; RALPH
EDELBAUGH; BARBARA MASON;
MEXICAN AMERICAN LEGISLATIVE
CAUCUS; TEXAS HOUSE OF
REPRESENTATIVES; and TEXAS
LEGISLATIVE BLACK CAUCUS;

Plaintiffs,

v.

GREG ABBOTT, in his official capacity as
Governor of the State of Texas; RUTH
HUGHS, in her official capacity as Texas
Secretary of State; DANA DEBEAUVOIR,
in his official capacity as Travis County
Clerk; CHRIS HOLLINS, in his official
capacity as Harris County Clerk; JOHN W.
OLDHAM, in his official capacity as Fort
Bend County Elections Administrator;

Defendants.

Case No.: 1:20-cv-1006

THE LINCOLN PROJECT AMICUS BRIEF
IN SUPPORT OF PLAINTIFFS

The Lincoln Project respectfully submits this *amicus curiae* brief in support of the
Plaintiffs' request for declaratory and injunctive relief.

INTRODUCTION

The Lincoln Project is an organization composed of Republicans, former Republicans
and conservatives dedicated to defeating candidates who have abandoned their constitutional

oath, regardless of party. To achieve that purpose, The Lincoln Project has created a broad coalition of supporters and volunteers across the country. Many of its supporters live in Texas. The Lincoln Project has put that organization to work contacting, surveying, communicating with and mobilizing voters. To those ends, The Lincoln Project has invested significant resources in the State of Texas. The recent order of Governor Greg Abbott on October 1, 2020 (the “October 1st Proclamation”) threatens to undermine much of the work The Lincoln Project has engaged in and cause a substantial burden to the voters supporting their mission within Texas. While the Plaintiffs represent a significantly different interest than The Lincoln Project, the relief they seek would also provide relief to The Lincoln Project and its supporters in Texas.

ARGUMENT

I. Background.

A. The COVID-19 pandemic.

The global COVID-19 pandemic affects every aspect of life. As of October 6th, more than 35,638,000 people have tested positive for COVID-19 worldwide, 1,046,392¹ in the United States and 794,319 in Texas.² The devastating illness has cost 16,437 Texans their lives.³ The public health crisis has been declared both a national emergency and a public health disaster by the State of Texas. The danger of serious illness and death is amplified for older individuals and becomes particularly worrisome for those over the age of 65. Spread most easily in enclosed areas with large crowds, the illness presents a particular threat to voters gathering at polling locations.

¹ Johns Hopkins University of Medicine, *COVID-19 Dashboard by the Center for Systems Science and Engineering at Johns Hopkins*, <https://coronavirus.jhu.edu/map.html> last visited Oct. 6, 2020.

² Johns Hopkins University of Medicine, *Coronavirus Resource Center*, <https://coronavirus.jhu.edu/region/us/texas> last visited Oct. 6, 2020.

³ *Id.*

Due to these realities, states across the country, including Texas expect to see a substantial increase in vote by mail ballots cast in the November 3, 2020 general election. Vote by mail ballots, or absentee mail ballots, allow at-risk individuals to avoid potentially life-threatening circumstances while also exercising their civic duty. Recognizing that reality led Gov. Abbott to make a proclamation on July 27, 2020 suspending sections of the Texas Election Code and providing additional flexibility to voters casting ballots. Gov. Abbott's subsequent October 1, 2020 proclamation substantially undermines that flexibility and as discussed below, endangers the lives of The Lincoln Project supporters attempting to cast their ballots.

B. Traditional Republican history of expanding voting rights and access to the ballot.

Beginning with the Republican Party's first president, and The Lincoln Project's namesake, the Republican Party historically fought to expand equal rights, including at the ballot box. In the aftermath of the Civil War, Republicans sponsored and passed three constitutional amendments during Reconstruction: the Thirteenth Amendment (prohibiting slavery), the Fourteenth Amendment (barring states from denying equal protection of the laws), and the Fifteenth Amendment (dictating that the right to vote could not be denied on the basis of race). A half century later, Republicans were critical to passing the Nineteenth Amendment (prohibiting disenfranchisement based on sex).

Of course, the rights guaranteed by those constitutional provisions still needed to be vindicated and Republicans traditionally stood at the vanguard. For example, Republicans aided the effort of future U.S. Supreme Court Justice Thurgood Marshall when he challenged the Democratic Party's "white primary" in Texas. Considered by Justice Marshall as the most

important case he ever argued,⁴ *Smith v. Allwright*⁵ centered on the right of an African-American in Harris County, Texas, to vote.

It is in that proud tradition that The Lincoln Project have engaged in their efforts to help register, educate, and inform Texans seeking to cast their ballots. It is in that tradition of expanding access to the ballot that The Lincoln Project files this *amicus curiae* brief in support of Plaintiffs' prayer for declaratory and injunctive relief.

C. The Lincoln Project.

Founded less a year ago, The Lincoln Project grew swiftly in prominence among conservatives as it harnessed the sentiments of Republicans and former Republicans disaffected by the current administration and Congressional enablers. Best known for producing powerful videos and commercials, The Lincoln Project has supplemented those efforts with a substantial field operation in targeted states, including Texas.

Founders of The Lincoln Project have run multiple Republican gubernatorial, senatorial, and presidential campaigns throughout their careers. Several have longstanding ties to Texas. For example, founder John Weaver is a native Texan, attended Texas A&M University and helped lead the campaigns of President George H.W. Bush, Senator John McCain and Governor John Kaisch. Weaver also worked for several Republican members of Congress from Texas and served as the executive director for the Republican Party of Texas. Similarly, Reed Galen is a graduate of the University of Texas and a political strategist who helped guide the campaigns of President George W. Bush, Senator John McCain and Governor Arnold Swarzenegger. Other

⁴ Pamela S. Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, 71 U. Cin. L. Rev. 1345, 1356 n. 69 (2003) (citing Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* 248 (2000)).

⁵ *Smith v. Allwright*, 321 U.S. 649 (1944).

founders have had equally prestigious careers working as Republican operatives. That experience has made them experts in reviewing voting patterns, engagement models and turnout strategies.

The Lincoln Project has put that expertise to work in Texas over the past several months. Field staff and organizers have developed leadership teams across the state working on various programs to register voters, educate them on the process of voting, and communicate with those who support their preferred candidates. As the *Dallas Morning News* recently reported, in recent weeks The Lincoln Project has bolstered its mobilization efforts in Hispanic communities, spent nearly a million dollars in Texas and committed another million-dollar investment into its efforts in the state.⁶ A primary program engaged in by The Lincoln Project revolves around identifying supporters eligible to vote by absentee mail ballot and providing support throughout that process.

Through its leadership teams and field staff, The Lincoln Project has targeted voters it has identified as Republicans or former Republicans who support their preferred candidates. Because Texans must either vote in a party primary⁷ or take an oath of affiliation⁸ to join a political party, and because that affiliation automatically expires at the end of every calendar year,⁹ it requires both substantial skill and expertise to identify and target voters. However, given the background of its founders and an investment of resources in the state, The Lincoln Project has been able to make high quality estimates for its voter engagement programs. Those estimates in turn inform The Lincoln Project's belief that Gov. Abbott's October 1st Proclamation will

⁶ Jeffers Jr., Gromer, *Lincoln Project plans Texas offensive against Republican Donald Trump, steps up Hispanic outreach*, Dallas Morning News (Oct. 6, 2020, 5:30 AM), <https://www.dallasnews.com/news/politics/2020/10/06/lincoln-project-plans-texas-offensive-against-republican-donald-trump-steps-up-hispanic-outreach/> last visited Oct. 6, 2020.

⁷ Tex. Elec. Code Ann. § 162.003.

⁸ Tex. Elec. Code Ann. §§ 162.006 and 162.007.

⁹ Tex. Elec. Code Ann. § 162.010.

directly and disproportionately burden the Republican and former Republican voters it has targeted.

II. Effect of the October 1st Proclamation on Conservative Voters

The October 1st Proclamation limits the number of ballot drop boxes to which voters can return absentee mail ballots to one per county. Because Republican and former Republican voters tend to be older and live farther away from the city centers where the single ballot drop boxes are located, it increases their burden to cast a ballot.

The only voters affected by the October 1st Proclamation are those that both live in a county with multiple ballot drop boxes and qualify for an absentee mail ballot. While the number of counties that planned to have multiple ballot drop boxes is relatively small, those that do represent some of the largest population centers in the state. Consequently, those counties also contain a large percentage of the likely Republican voters targeted by The Lincoln Project. The list includes Harris, Travis and Fort Bend Counties.

Under Texas law, individuals eligible for an absentee ballot must be (1) away from their county on Election Day and during early voting; (2) sick or disabled; (3) 65 years of age or older on Election Day; or (4) confined in jail, but eligible to vote.¹⁰ The Lincoln Project has identified voters in the third category – age 65 or older – as a substantial number of its targeted, likely Republican voters through its absentee mail ballot program.

The Lincoln Project voter analysis combined both past party affiliation (voting in any of the past three Republican primaries) and additional demographic data to determine that 169,511 likely Republican voters over the age of 65 live in Harris County.¹¹ Similarly, 36,955 live in

¹⁰ Tex. Elec. Code Ann. §§ 82.001, 82.002, 82.003, 82.004.

¹¹ See Appendix I.

Travis County¹² and 38,465 live in Fort Bend County.¹³ While the raw numbers are smaller than the number of likely Democratic voters in Harris and Travis Counties, the percentage of this subset among total likely Republican is greater. Likely Republican voters 65 or older account for 28.6% of all likely Republican voters in Harris County. A similar subset among Democrats equates to only 18.6% percent. In Travis County the disparity is even greater, 27.8% to 15.4%. Fort Bend County is the closest of the three at 24.3% to 18.5%. In each case, the percentage of the likely Republican voter universe over the age of 65, and consequently eligible to vote by absentee ballot, far exceeds the percentage from likely Democrat voters.

As important, the geographical distribution of likely Republican voters places them farther away from the single ballot drop boxes. The drop boxes in Harris and Travis Counties are located centrally in their respective largest cities, Houston and Austin. The Fort Bend County drop box is centrally located in Rosenberg. But the distribution of likely Republican voters live farther away from these locations than their Democratic counterparts. That means the likely Republican voters The Lincoln Project hopes to engage carry a heavier burden to cast their ballots.

For example, likely Republican voters over the age of 65 living in Baytown, on the edge of Harris County and across the bay from Houston, outnumber their Democratic counterparts 2,129 to 1,303. Similarly, in the southeast corner of the county, likely Republican voters over the age of 65 outnumber similar Democrats in Pasadena by 4,353 to 2,407. This same pattern generally plays out across the rest of the county as well as in Travis and Fort Bend Counties. Likely Republican voters over the age of 65 live farther away from the one ballot drop box remaining in each county following the October 1st Proclamation.

¹² See Appendix II.

¹³ See Appendix III.

Travelling to those locations is not the only challenge facing likely Republicans when they arrive to cast their absentee mail ballot. By limiting the number of ballot drop box locations, the October 1st Proclamation creates a wide variety of additional logistical challenges to likely voters over the age of 65. For example, limiting Harris County to one ballot drop box creates a bottleneck effect that may create the very crowds voters 65 and older hoped to avoid in the first place. Because potentially large numbers of voters would need to use the single drop location, during the busiest hours it is possible that enough people will be casting ballots to create a long line at that one location. That would be counter-productive to the policies implemented to protect a vulnerable group from the threat posed by COVID-19.

III. Absentee Ballot Drop Boxes Do Not Present a Security Concern.

The October 1st Proclamation specifically noted that “an amendment to the suspension of the limitation on the in-person delivery of mail ballots, as made in the July 27, 2020 proclamation, is appropriate to add ballot security protocols.” This argument seems based on the faulty conclusion that absentee mail ballots may pose a significant threat of voter fraud or election tampering. That naked assertion has been refuted by The Lincoln Project and other Republican legal luminaries and conservative think tanks.

Less than a month ago, a leading Republican election law attorney and counsel to four of the past six Republican presidential nominees declared, “the basic truth that four decades of dedicated investigation have produced only isolated incidents of election fraud” in the *Washington Post*.¹⁴ He noted that the Heritage Foundation Election Fraud Database, a program

¹⁴ Ginsberg, Benjamin L., *Republicans have insufficient evidence to call elections ‘rigged’ and ‘fraudulent,’* The Washington Post (Sep. 8, 2020, 4:12 PM) <https://www.washingtonpost.com/opinions/2020/09/08/republicans-have-insufficient-evidence-call-elections-rigged-fraudulent/> last visited Oct. 7, 2020.

of the conservative think tank, “found just 372 possible cases of illegal voting of 14.6 million cast in 2016 and 2018 general election – 0.000025 percent.”¹⁵

In Texas itself, the Heritage Foundation Election Fraud Database demonstrates how exceedingly infrequent fraudulent use of absentee ballots occurs. From 2012 through 2019 a total of eight instances of fraudulent use of absentee ballots were noted by the think tank.¹⁶ The last three years have seen only one conviction each year for such behavior.

In light of this information, it is evident that absentee mail ballots, much less the monitored and secure drop boxes used to collect them, do not present a current security concern justifying limitation to one per county.

CONCLUSION

For the reasons argued above, The Lincoln Project respectfully urges this Court to rule in favor of the declaratory and injunctive relief prayed for by the Plaintiffs.

Dated: October 7, 2020

Respectfully submitted,

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¹⁵ *Id.*

¹⁶ The Heritage Foundation Election Database https://www.heritage.org/voterfraud/search?combine=&state=TX&year=&case_type=All&fraud_type=24489 last visited Oct. 7, 2020.

¹⁷ *Pro hoc vice* motion pending.

Certificate of Service

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on October 7, 2020, and that all counsel of record were served by CM/ECF.

/s/ Allan Van Fleet

Appendix I

The Lincoln Project Voter Analysis - Harris County

Total Voters

- **Total Likely Republicans: 592,230**
- Total Likely Democrats: 1,120,077
- **Total Estimated Republican Primary Voters (16,18, 20): 347,542**
- Total Estimated Democrat Primary Voters (16, 18, 20): 392,928

65+ Voters

- **65+ voters who voted in 2016, 2018, 2020 Republican Primaries: 135,839**
 - **39.1% of Harris County Republican Primary voters are 65+**
- 65+ - Likely Republican affiliated voters: 169,511
 - 28.6% of Harris County Likely Republican affiliated voters are 65+
- **65+ voters who voted in 2016, 2018, 2020 Democrat Primaries: 116,562**
 - **29.7% of Harris County Democratic Primary voters are 65+**
- 65+ - Likely Democrat affiliated voters: 207,895
 - 18.6% of Harris County Likely Democrat affiliated voters are 65+

COVID-19

- Total COVID Cases in Harris: **143,350 infections**
 - COVID Cases in the last week: 3,849

Harris City/Municipality	Est. 65+ Republican Primary Voters ('16, '18, '20)	Est. 65+ Democrat Primary Voters ('16, '18, '20)
Baytown City	2,129	1,303
Bellaire City	1,202	894
Bunkerhill Village City	436	148
Deer Park City	2,205	603
El Lago City	281	109
Friendswood City	526	243
Galena Park City	103	339
Hedwig Village City	218	76
Hilshire Village City	98	49
Houston City	55,203	69,510
Humble City	520	317

Hunters Creek City	520	172
Jacinto City	69	297
Jersey Village City	860	305
Katy City	818	211
La Porte City	1,558	698
Missouri City	78	376
Morgans Point City	43	11
Nassau Bay City	496	213
Pasadena City	4,353	2,407
Pearland City	901	330
Piney Point City	486	143
Seabrook City	691	265
Shoreacres City	127	30
South Houston City	155	304
Southside Place City	117	106
Spring Valley City	387	153
Stafford City	12	4
Taylor Lake Village City	476	215
Tomball City	858	182
Waller City	21	6
Webster City	292	167
West University Place City	1,279	1,058
*Unknown City within Harris	58,321	35,318

Appendix II

The Lincoln Project Voter Analysis – Travis County

Total Voters

- **Total Likely Republicans: 132,737**
- Total Likely Democrats: 415,535
- **Total Estimated Republican Primary Voters (16,18, 20): 96,150**
- Total Estimated Democrat Primary Voters (16, 18, 20): 237,572

65+ Voters

- **65+ voters who voted in 2016, 2018, 2020 Republican Primaries: 33,425**
 - **34.8% of Travis County Republican Primary Voters are 65+**
- 65+ - Likely Republican affiliated voters: 36,955
 - 27.8% of Travis County Likely Republican affiliated voters are 65+
- **65+ voters who voted in 2016, 2018, 2020 Democrat Primaries: 46,062**
 - **14.1% of Travis County Democratic Primary Voters are 65+**
- 65+ - Likely Democrat affiliated voters: 64,107
 - 15.4% of Travis County Likely Democrat affiliated voters are 65+

COVID-19

- Total COVID Cases in Travis: **29,576 infections**
 - COVID Cases in the last week: 672

Travis City/Municipality	Est. 65+ Republican Primary Voters ('16, '18, '20)	Est. 65+ Democrat Primary Voters ('16, '18, '20)
Austin City	18,622	33,522
Cedar Park City	268	151
Creedmoor City	14	7
Elgin City	13	34
Jonestown City	181	114
Lago Vista City	923	457
Lakeway City	2,101	1,113
Manor City	83	198
Pflugerville City	1,437	1,767
Round Rock City	13	13
Sunset Valley City	63	76

*Unknown City within Travis	9,707	8,610
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Appendix III

The Lincoln Project Voter Analysis – Fort Bend County

Total Voters

- **Total Likely Republicans: 158,050**
- Total Likely Democrats: 197,657
- **Total Estimated Republican Primary Voters (16,18, 20): 85,770**
- Total Estimated Democrat Primary Voters (16, 18, 20): 83,687

65+ Voters

- **65+ voters who voted in 2016, 2018, 2020 Republican Primaries: 29,609**
 - **34.5% of Fort Bend Republican Primary voters are 65+**
- 65+ - Likely Republican affiliated voters: 38,465
 - 24.3% of Fort Bend County Likely Republican affiliated voters are 65+
- **65+ voters who voted in 2016, 2018, 2020 Democrat Primaries: 22,947**
 - **27.4% of Fort Bend Democratic Primary voters are 65+**
- 65+ - Likely Democrat affiliated voters: 36,521
 - 18.5% of Fort Bend County Likely Democrat affiliated voters are 65+

COVID-19

- Total COVID Cases in Fort Bend: **16,494 infections**
 - COVID Cases in the last week: 392

Fort Bend City/Municipality	Est. 65+ Republican Primary Voters ('16, '18, '20)	Est. 65+ Democrat Primary Voters ('16, '18, '20)
Arcola City	18	38
Beasley City	31	10
Fulshear City	476	173
Houston City	201	2,647
Katy City	151	54
Meadows Place City	437	238
Missouri City	2,833	4,183
Needville City	178	70
Orchard City	28	4
Pearland City	101	235

Richmond City	557	295
Rosenberg City	1,160	878
Simonton City	76	8
Stafford City	456	497
Sugarland	7,561	4,009
Weston Lakes City	648	158
*Unknown City within Fort Bend	14,696	9,401